

MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

September 10, 2003

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 4:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

None.

APPROVAL OF AGENDA

Councilor Wurzbarger moved approval of the Agenda, as published. Councilor Lopez seconded the motion, which passed 8-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbarger voting for, and none against.

APPROVAL OF CONSENT CALENDAR

Upon motion by Councilor Coss, seconded by Councilor Ortiz, the Consent Calendar, as amended, was approved by Roll Call vote, as follows:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer, Councilor Wurzbarger.

Against: None.

- a) Request for Approval of Grant Application — Airport Aid for Runway 15-33 Reconstruction; New Mexico Department of Transportation Aviation Division.
- b) Request for Approval of Grant Agreement — Cash in Lieu of Commodities; North Central New Mexico Economic Development District Area Agency on Aging.
- c) Request for Approval of Two Grant Contracts — Southside Senior Center Project; State of New Mexico State Agency on Aging.
- d) Request for Approval of Consolidated Grant Contract — North Central New Mexico Economic Development District Area Agency on Aging.
 - 1) Older Americans Act Title III-B, III-C 1 & 2, E and Alzheimer Respite Care.
 - 2) New Mexico General Appropriations Act.
- e) Request for Approval of Emergency Procurement — Tile Floor System for Genoveva Chavez Community Center; Coronado Paint & Decorating.
- f) Request for Approval of Budget Adjustments — Personnel for GCCC.
- g) Request for Approval of Amendment No. 1 to Professional Services Agreement — Employee Assistance Program; The Solutions Group.
- h) Request for Approval of Amendment No. 1 to Professional Services Agreement — ArtWorks Coordinator; Lorraine Schechter.
 - 1) Request for Budget Increase — Quality of Life Fund.
- i) Request for Approval of Professional Services Agreement — Fare Collection Equipment System for Transit Division; Genfare, a Unit of Spy Corporation.

- j) Request for Approval of Amendment No. 3 to Agreement Between Owner and Architect — Design Services for Phase II Marty Esther Gonzales Senior Center Reconstruction; Agnew & Mifsud.
- k) [Moved to Consent Calendar Discussion Agenda.]
- l) Request for Approval of Procurement Under State Price Agreement — Slurry Seal for Fifth Street; Camino Lado, Paseo de la Conquistadora and Avenida Cristobal Colon; IPR Ltd.
- m) Request for Approval of Memorandum of Understanding — Senior, Paratransit and Parking Services for City/County Residents; County of Santa Fe.
- n) RESOLUTION NO. 2003-69. (Councilor Chavez)
A Resolution in Support of the Reconstruction of Juan de Dios Road.
 - 1) Request for Approval of Budget Increase — CIP Reallocation.
- o) Request for Approval to Publish Notice of Public Hearing for October 8, 2003, City Council Meeting:
 - 1) BILL NO. 2003-34: An Ordinance Creating a New Section 14-8.15 SFCC 1987 Regarding Transportation Impact Studies; Transportation Requirements and Amending Section 23-3.1 Regarding Curb Cut Permits. (Councilor Heldmeyer and Councilor Chavez)
 - a) CONSIDERATION OF RESOLUTION NO. 2003-____.
(Councilor Heldmeyer and Councilor Chavez)
A Resolution Adopting Administrative Procedures for Transportation Impact Studies.
- p) [Moved to Consent Calendar Discussion Agenda.]
- q) [Moved to Consent Calendar Discussion Agenda.]
- r) [Moved to Consent Calendar Discussion Agenda.]

APPROVAL OF MINUTES:

Special City Council Meeting — August 20, 2003

Councilor Lopez moved for approval of the August 20 minutes, as submitted. Councilor Chavez seconded the motion, which passed 6-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz and Councilor Pfeffer voting for, and none against. [Not present for this action: Councilor Coss; Councilor Wurzbarger.]

Regular City Council Meeting — August 25, 2003

Councilor Bushee moved for approval of the August 25 minutes, as submitted. Councilor Lopez seconded the motion, which passed 6-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz and Councilor Pfeffer voting for, and none against. [Not present for this action: Councilor Coss; Councilor Wurzbarger.]

PRESENTATIONS

Proclamation — “Russian Summer in Santa Fe.” (Marsha C. Bol)

Ms. Bol announced that, on May 28, 2004, the Museum of Fine Arts will be premiering an international exhibition called “Nicholas and Alexandra: At Home with the Last Czar and His Family.” She stated that this exhibition would include over 200 luxury items and art objects that belonged to the last Czar’s family.

Ms. Bol stated that this exhibition has presented an opportunity for cultural organizations in Santa Fe to join together and collaborate on creating a “Russian Summer in Santa Fe” that will run from Memorial Day to Labor Day weekend. She stated that at least 20 major organizations in Santa Fe are planning to present Russian-related performing arts, lecture series and visual arts exhibitions.

Mayor Delgado read a proclamation declaring the summer of 2004 as Russian Summer in Santa Fe.

Proclamation — First Place Award in “M-Bus Campaign”; American Public Transportation Association. (Thomas Williams)

Public Works marketing director Joyce Bond announced that this award was the result of the City’s “M-Bus Campaign — take the Museum Bus to Museum Hill.” She said the City is now contending for the grand prize.

Ms. Bond introduced Barbara Haygood and Eliza Tibbs, who were responsible for designing this campaign.

Mayor Delgado read a proclamation declaring October 1 as “the Santa Fe Trails and Museum of New Mexico winners in the partnership to develop an award-winning campaign.”

Mr. Williams, director of Transit, spoke to the positive effect of this campaign on ridership. He commented that nearly 2,000 people rode the Museum Hill bus this past August.

Ms. Haygood stated that Mr. Williams and his staff “have been wonderful to work with — from Tom to the garage mechanics to the bus drivers to everyone with Santa Fe Trails.”

Quarterly Update on Marketing/Advertising Efforts for Santa Fe Trails. (Joyce Bond)

Ms. Bond acknowledged the invaluable assistance of Transit staff members, including the bus drivers. She stated that Katie Fitzgerald, marketing director at Villa Linda Mall, was especially helpful.

Ms. Bond’s associate, Sandi Duran, distributed copies of a tourist brochure to be distributed to all of the hotel properties along Cerrillos Road.

Ms. Duran said an employer-employee incentive pilot program is also underway with the State Land Office. She stated that surveys have been sent out to the Land Office employees to determine whether there is interest in developing a program with some of the businesses in order to alleviate parking problems. She said interest has been expressed and now passes are being developed.

Ms. Duran said there has been great success with the special event Park & Rides. She said ridership has been as follows:

Fourth of July Pancake Breakfast:	962
Indian Market:	3,206 [almost all tourists]
Zozobra:	2,874
Fiesta Parade	1,229
Historical/Hysterical Parade:	603

Ms. Duran stated that plans are underway for the Christmas Farolito Tour.

Ms. Duran also reported that there has been a great deal of interest expressed in using the Santa Fe Trails buses, benches and shelters as ad media. She said contracts have been signed with several businesses with an estimated \$10,000 in revenues.

Ms. Duran said Santa Fe Trails would have its tenth anniversary on October 16 in conjunction with National Transit Day. She stated that a kick-off celebration campaign would be designed by an advertising agency to run for ten days prior to that event. She asked Governing Body members to take the bus to the City Council meeting scheduled the week before (October 8).

ForeKids Golf Tournament. (Larry Lujan)

Mr. Lujan invited Governing Body members to volunteer at the fifth annual ForeKids Golf Tournament at the Marty Sanchez Links de Santa Fe on Friday, September 19. He stated that \$22,000 was raised last year, resulting in 623 scholarships to kids to use the Genoveva Chavez Center, and 295 scholarships to kids to use the Marty Sanchez Links.

Final Report from Civic Center Task Force. (David Barker)

Mr. Barker, chairman of the Civic Center Task Force, stated that the Task Force has now concluded its 18 months of work and is asking for support for its recommendations.

Mr. Barker noted that only one Task Force member voted against the endorsement of the action plan. He said other individuals have come forward to express their “concerns, reservations, hesitations and criticism.” He said, “I believe much of this criticism does not withstand scrutiny.

“Number one. Specifically, I dismiss that this facility is not being designed for local use.... One of our primary dictates was to ensure continued local access and affordability.... Costs have already gone up — costs of utilizing Sweeney for locals are more now than they have been in prior years.

“Number two. The third party review analyst... essentially said that this facility was being designed as a local community facility that would also be able to serve for trade shows and conventions.

“Thirdly, this facility is being designed for multiple non-related users and smaller groups than what Sweeney can currently accommodate.

“And fourthly, we clearly directed the consultant to assume that there would be continued preferential pricing for some local users.

“We dismiss the criticism that this facility is being designed for the benefit of a narrow group of business people. We have designed a parking facility that provides twice the amount of parking that Sweeney and City Hall need. This is for the city of Santa Fe. This is a \$12 million facility, of which the City will pay approximately five percent, or \$660,000....

“This criticism ignores the beneficial economic impact that this will bring to our gross receipts tax base, which is very important to you....

“The concern over financing is not something to be dismissed.... We believe that the study provides a workable, practical plan for providing the financing. The

utilization of the 1% special use tax.... if implemented in the near future, could raise an additional \$1 million for you to have in the kitty by the time we get to construction.”

Concluding, Mr. Barker reminded the Governing Body of studies that preceded this one dating back to 1998, recommending a new facility between 68,000 and 77,000 square feet; a new facility of 70,000 square feet; and a new facility between 74,000 and 88,000 square feet. He noted that the Task Force is recommending an 80,000 square foot facility.

Mayor Delgado asked Councilors to meet in the first of a series of study sessions on Tuesday, September 30 at 2:00 p.m.

Councilor Heldmeyer asked the City Clerk to have a link to the Task Force report (from Lloyd & Associates) placed on the City Web site.

CONSENT CALENDAR DISCUSSION AGENDA

Request for Approval of Sole Source Procurement — Three (3) Multi Space Parking Meters for Parking Division; Schlumberger.

1) Request for Approval of Budget Increase — Parking Enterprise Fund.

Councilor Pfeffer asked the following questions: 1) the \$45,000 cost for these three multi-space parking meters seemed like a lot, so what is the advantage? 2) Are these meters safer from vandalism than the ordinary meters? 3) Will parkers be able to find the meter, since it could be some distance from the parking space?

Public Works director Mike Lujan responded that ten individual parking meters would cost \$3,000. He said the cost savings in this instance is that, instead of collecting money from ten individual meters, the attendant would be collecting from one station.

Mr. Lujan stated that a lot of cities around the U.S. are moving in this direction. He said the Grant Avenue project would be a pilot effort.

Mr. Lujan stated that this type of pay station is also highly flexible — it accepts coins, paper money, credit cards and debit cards.

Mr. Lujan said two such meters have already been in place for several years, one at the Canyon Road parking lot and the other at the library parking lot. He commented that they have suffered a lot of abuse and have withstood that punishment. He said the meters have also stood up to bad weather, dust, cold weather, moisture, etc.

Councilor Pfeffer observed that the Canyon Road and library locations are parking lots. He said people expect to use these multi-meter stations when they leave their vehicles in the lots, but wondered how successful they would be with an on-street situation. He also pointed out that the two existing multi-space meters, because of their locations, are less subject to vandalism than would seem to be the case on the street, and in fact one of them is embedded in the library wall.

Mr. Lujan responded that there would be a learning curve for the users, which is why the City plans to start out with this small project. He added that, if for some reason these pilot meters do not work for Santa Fe, they can be moved and placed in some of the City's off-street lots.

Councilor Pfeffer said he would vote for this item under the assumption that the Parking Division would install the test meters such that they are not subject to vandalism.

Councilor Pfeffer moved for approval. Councilor Lopez seconded the motion.

Councilor Heldmeyer noted that these multi-space meters have been in use in Europe for decades. She said they are particularly useful in historic districts as a way to avoid signage clutter on the street.

The motion passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee.

Against: None.

Not present during this action: Councilor Ortiz.

CONSIDERATION OF RESOLUTION NO. 2003-70.

(Councilor Pfeffer and Councilor Wurzbarger)

A Resolution Supporting Governor Bill Richardson's Efforts to Establish a Rail Link Between Albuquerque and Santa Fe.

Councilor Pfeffer moved for approval. Councilor Lopez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez.

Against: None.

Not present during this action: Councilor Ortiz.

**CONSIDERATION OF RESOLUTION NO. 2003-71.
(Councilor Lopez, Councilor Heldmeyer, Councilor Wurzburger
and Councilor Ortiz)
A Resolution to Expedite the Planning and Implementation of
the City's Response to the Bark Beetle Infestation.**

Councilor Lopez moved approval of this Resolution with the following amendment to Section 1 on page 2:

Establish an internal working group with representatives from the Fire Department, Parks and Recreation Department, Planning and Land Use Department, Sangre de Cristo Water Division, Santa Fe Beautiful and other City staffs as appropriate to explore short-term, mid-term and long-term approaches;

Councilor Bushee seconded the motion.

Councilor Lopez said the City's GIS program would be able to identify specific areas such as arroyos where dead piñon exist. She commented that Engineering staff will then be able to go in and determine what the impact would be on soil stabilization and drainage control when these trees are removed and whether or not check dams and other devices will be necessary to replace them.

Councilor Lopez said Chief Sperling of the Fire Department has also been researching the possibility of emergency funds. She commented that Santa Fe is literally "surrounded by tinder" as a result of the bark beetle.

Councilor Chavez stated that he has asked that the City discontinue the practice of accepting green waste at the transfer station and instead direct it to the regional landfill, where there is a chipper in operation that creates mulch. He noted that the green waste at the transfer station gets mixed with solid waste and then is very difficult to separate once it arrives at the regional landfill, so it ends up being buried there and taking up space.

Councilor Chavez conceded that sending people directly to the landfill with green waste would create long lines of trucks waiting to unload. He said that, in his discussions in recent days with staff, the City Manager and the Mayor, it was determined that the City could administratively stop the practice of accepting green waste at the transfer station, but additional time would be needed to publicize that change.

Councilor Chavez said the Solid Waste Management Agency joint powers board has also looked into what it would take to expand operations at the landfill by creating a staging area for the green waste. He stated that a firewood program has

also been looked into, where the larger caliper trees would be set aside for needy families.

Councilor Chavez stated that the mulch created at the landfill could be used on City landscaping to stretch the City's water a bit further.

City Integrated Pest Manager Fabian Chavez was asked to make a presentation.

Mr. Chavez stated that registering the piñon trees with the GIS system will require somebody to go out and log their locations; to that end, State Forestry has enthusiastically agreed to fly Santa Fe next week at their expense. He said this would create maps reflecting numbers of trees per acre.

Mr. Chavez commented that the top inch of soil on the north side of Santa Fe in the Camino de las Crucitas area is very moist as the result of two days of rain, but below that the soil is powder dry. He said snow pack, with its slow melting, is ideal for watering.

Mr. Chavez said there are different schools of thought about the cutting of the dead piñon. He said that one body of research says that cutting and leaving the wood, slash and waste attracts the beetle — which is borne out by a City-run experiment — while another opinion is that it makes no difference when done by individuals or a neighborhood group.

Mr. Chavez stated that staff is in contact with municipalities and individuals who are cutting piñon, such as in Los Alamos and Ruidoso. He commented that everyone agrees that “zero percent” of this should be buried in landfills, since “this is what kills landfills.”

Mr. Chavez said he spent an afternoon at the regional landfill observing activities. He commented that with the current setup, because so many people are going out there to unload and because there are not enough workers, it takes a truck two to three hours to unload and weigh out on a typical day.

Mr. Chavez stated that he was in complete support of an interim plan for chipping and shredding at the landfill. He said it typically costs \$5 to unload a pickup at the regional landfill, while at the transfer station it costs \$40-\$70. He commented, “its nuts that we’re accepting any solid waste at the transfer station. I know it’s convenient, but I think we need to take a leadership position on this.”

Mr. Chavez said Santa Fe is moving into the dormant season within the next three to four weeks. He suggested that the City immediately go in with crews and safely and efficiently cut wood in vulnerable areas, and chip the trees right there. He pointed out that it takes a small crew several minutes to cut down a few trees, but it takes them two or three hours to go to the landfill and unload the material,

which he thought “crazy.” He commented that the operation he was suggesting would save a lot of money and return the mulch back to the soil.

Mr. Chavez stated that wood bolts were delivered to Parks & Recreation last year, where needy people and senior citizens could call and ask for it. He said the crews were delivering wood throughout the winter. He suggested expanding on that this year by setting up a process where wood bolts could be left at curbside (or elsewhere) and people could pick it up to sell or use. He commented that this would save more trips to the landfill. He suggested chipping branches only.

Mr. Chavez stated that the first flight of beetles began in mid April and then there was a fading this summer. He said the City began catching large numbers of beetles again about three weeks ago; with the turnaround time of six weeks for the complete life cycle, there will be another huge fading between now and winter. He stated that, if it turns cold rapidly, the trees will not fade, “but the trees are for sure standing dead.” He said other large patches would begin to appear before next spring if there is an extended warm fall this year.

Councilor Chavez asked Mr. Chavez what it would cost to expand the existing program to implement his recommendations.

Mr. Chavez responded that, if existing City staff is reassigned in the fall, and necessary equipment is purchased (chain saws, a trailer and safety equipment for crews) to get through a five-month cutting season (October through February), it would cost about \$84,000. He added, “If we’re in this for the long haul — and we are definitely in this for several years — if we were to hire a crew to do this full time, and I would caution that we don’t just hire temporaries. We’re looking at highly dangerous work and we need highly motivated and trained individuals to do this cutting operation expeditiously. If we do that, it will cost \$53,000 for the first year in capital outlay, and recurring costs of a little over \$200,000 to fund the cost of the crews.”

Councilor Chavez stated that he would be calling a special meeting of the Solid Waste Management Agency Joint Powers Board next week to ask SWMA to consider funding some of this effort.

Councilor Chavez urged that the Council move as soon as possible to avoid the prospect that people will begin illegally dumping dead piñon, which then will have to be cleaned up.

Responding to questioning from Councilor Chavez, City Manager Jim Romero stated that he would use the media (radio and newspapers) to warn people that they would have to take green waste directly to the regional landfill in seven to ten days. He said Juan Rios would also be asked to look into ways of saturating the community with this information.

Mayor Delgado said he assumed SWMA would be included on the task force.

Councilor Lopez proposed the following additional amendment to Section 1, page 2:

Establish an internal working group with representatives from the Fire Department, Parks and Recreation Department, Planning and Land Use Department, Sangre de Cristo Water Division, Santa Fe Beautiful, Solid Waste and other City staffs as appropriate to explore short-term, mid-term and long-term approaches;

and the following amendment to Section 3, page 2:

Explore emergency funding and assistance from local, state and federal government agencies, including SWMA and the Agricultural Extension Service....

The amendments were accepted as friendly.

Councilor Bushee said she would prefer that the matter of what happens at the transfer station and at the regional landfill go through the Public Works Committee. She stated that, as a landscaper herself who is required to use the regional landfill most of the time to drop off green waste, she has discovered that it is “often closed due to winds in certain parts of the season, and so you can find on a Friday that you’ll have truckloads of green waste sitting in town somewhere. The transfer station, with different hours, it’s hard to occupy; and then sometimes the Caja del Rio landfill will just be closed straight out.”

Councilor Bushee also pointed out that the chipper needed to do green waste is very different from the chipper the City has that can shred tires, glass and large items. She said a smaller system could be used at the transfer station. She said she would prefer to see the transfer station stay in use for now.

Councilor Bushee suggested that the new task force put out an informational brochure, led by staff, “to separate fact from fiction.”

Councilor Bushee said a fiscal impact report should be developed on using the transfer station versus the regional landfill. She commented that Mr. Chavez has been requesting funding to buy some small chippers to assist people in disposing of their piñon.

Councilor Bushee stated that the City should take on, as a priority, determining the impacts to its own properties.

Councilor Bushee stated that the land use aspect of this infestation needs to be looked at. She noted that the City requires people planning to build in the Escarpment District to use evergreens as screening. She said most of these turn

out to be piñon because juniper is difficult to transplant. She said perhaps these rules need to be changed to use other types of vegetation.

Councilor Wurzbarger suggested that Mr. Chavez post information on the City's Web site tomorrow, instructing people on what they should do.

Councilor Wurzbarger stated that she would like the task force to look at mid range and long range approaches. She stated that, at today's economic development conference, someone mentioned that they had just received a federal grant to look at biomass. She said, "He was talking about clearing the trees, not the bark beetles, so certainly if we added that, that we would be able to basically turn over X percent of our entire energy use to electricity that would be done through biomass." She suggested that the task force explore that.

Councilor Heldmeyer noted that it is cheaper to go to the regional landfill with green waste is because the Caja del Rio board decided to lower the price to encourage people to bring it in.

Councilor Chavez stated that the language on page 1, line 24, raised a concern for him because it could mislead private property owners into thinking that the City would be willing and able to remove their piñon.

Councilor Chavez proposed the following amendment to page 1, line 24:

Whereas, the City must prepare and implement a plan for the removal of dead piñon trees on City-owned land and ~~on private property~~
through a collaborative effort develop a plan to help private property
owners to remove dead piñons;

Councilor Lopez stated that she was thinking in terms of a partnership between public and private entities to allow this to happen. She pointed out that there are citizens in Santa Fe who will need help, including senior citizens, and there may be volunteer groups who will help private property owners — for instance, maybe Santa Fe Clean and Beautiful can haul the green waste away. She stated that perhaps the federal or state funding she is seeking in Section 2 of the resolution would facilitate the purchase of shredders to help private entities and others remove their green waste.

Councilor Chavez stated that, if the City is going to prepare and implement a plan for removal of the trees, he thought the plan should speak to all of that, including assisting private property owners in removing their trees.

The amendment was accepted as friendly.

City Manager Jim Romero clarified that, based on his understanding that this will first go through committee, he would not publicly announce that the transfer station will no longer accept green waste in the next seven to ten days.

Councilor Chavez stated that he has spent the past two days working with the City Manager and staff to have this happen sooner rather than later, and so would disagree with Councilor Bushee's suggestion that this go through the committee process first.

Councilor Bushee responded that this topic is separate from the resolution and should not have been discussed without some kind of advertisement, since it involves a change in a City facility, and she thought this should at least go through the Public Works Committee.

Councilor Heldmeyer suggested that this go to the September 22 Public Works Committee and the City Council meeting of September 24. She said this would only delay changing the policy at the transfer station by four days.

The resolution, as amended, passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez.

Against: None.

CONSIDERATION OF RESOLUTION NO. 2003-72.

(Councilor Coss, Councilor Pfeffer, Councilor Bushee and Councilor Chavez)

A Resolution Declaring that Maintenance of the Rio Grande as a Flowing, Living River in New Mexico is a City Goal and Directing the Mayor and Staff to Cooperate with Other Entities to Achieve This Goal.

Councilor Coss commented that, when Councilors first talked about introducing this resolution months ago, there hadn't been a decision on the silvery minnow at that point, and the idea was to go to the Rio Grande for water. He added, "With maybe not everybody being as fully aware as they should have been, some time ago we passed a threshold where the future of this community depends on going to the Rio Grande for water. And it wasn't that way for the first 400 years of our history, but it's that way now. I think it's very important that we be aware of that and we realize that, if we don't keep the Rio Grande alive, we don't have much of a future as a community."

Councilor Coss said he has been to Los Angeles, Phoenix and other cities where they have let the rivers die, and he did not want that to be in Santa Fe's future.

Councilor Coss moved for approval. Councilor Chavez seconded the motion.

Councilor Pfeffer commented that this to him is an environmental issue for the river's sake while also being a water supply issue — as Councilor Coss had said, the City is now going to the river for its water supply, but without a river, there will be no water supply.

Councilor Pfeffer noted that the Council will be considering, at this meeting, water for the Bureau of Reclamation in terms of the silvery minnow decision. He noted Section 2 of this resolution, which states, "The Mayor and staff shall take all possible steps to cooperate with local, state and federal governments, water rights holders, conservation organizations and other water users to maintain the stream flow and ecological integrity of the Rio Grande." He said to do so would be in the community's interest as well as the river's interest.

Councilor Pfeffer also commented that this resolution and several that follow "may come in some folk's minds as the feel-good resolutions, that may be challenged on the basis that they aren't really City business, and I just want to say on the record out loud that I believe all of these resolutions, including this one and those coming up on this agenda, have very direct relation to City business."

Councilor Bushee asked Public Utilities staff member Rick Carpenter to look into ways that citizens could make contributions to help keep the Rio Grande alive and flowing. She said perhaps people could check a box on their utility bill.

Mr. Carpenter responded that he would work with the billing department as well as the consultant, Integrated Utilities Management, to see how that could be done.

The resolution, as amended, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: None.

[Conclusion of Consent Calendar Discussion.]

ACTION ITEMS

CONSIDERATION OF RESOLUTION NO. 2003-73.

(Councilor Bushee, Councilor Lopez, Councilor Chavez, Councilor Coss)

A Resolution Supporting the Proposal by the Governor of the State of New Mexico to Provide Two Million Dollars in Housing Assistance to Teachers, Nurses, Police and Fire Officers and Other Critical Service Workers.

Councilor Bushee asked staff to send a copy of this resolution to the Governor's Office.

Councilor Bushee moved for approval. Councilor Heldmeyer seconded the motion, which passed on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

CONSIDERATION OF RESOLUTION NO. 2003-74.

(Councilor Lopez, Councilor Bushee and Councilor Chavez)

A Resolution Supporting Mentoring Programs for the Youth of Santa Fe and Asking Others for Their Support.

Children & Youth planner Lynn Hathaway stated that this resolution follows on a letter from the Mayor last year that encouraged mentoring by City employees. She said she first thought there was a personnel policy covering that, but that was not the case. She stated that AFSCME members are permitted to take an hour of paid leave each week to mentor.

Dr. Hathaway said this resolution will extend mentoring to all City employees and give them one hour of paid leave each week to work with students in the public schools or Big Brothers Big Sisters or a like organization.

Dr. Hathaway introduced John Reid, one of Santa Fe's first mentors and a founding member of the Mentoring New Mexico Program.

Mr. Reid stated that he was a retired geologist and for the past five years has been a mentor in the Santa Fe Public Schools, one of the most rewarding experiences in his life.

Mr. Reid asked members of the Governing Body to join with other public officials who have volunteered to be mentors, including a member of the County Commission and two members of the School Board.

Mr. Reid commented, "I know we all value the future of our youth, and I believe this is a great opportunity for all of us to be involved with our kids."

Councilor Lopez moved for approval, with the following amendment:

On page 2, beginning on line 17, delete Section 2 and insert a new Section 2 to read as follows:

Section 2. The Governing Body directs staff to develop a personnel policy that allows all employees up to one hour per week of paid work time to participate in a qualified mentorship program such as those for students in the Santa Fe public schools. The Human Resources Department shall decide which mentorship programs qualify.

Councilor Wurzbarger seconded the motion, which passed on the following Roll Call vote:

The resolution, as amended, passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez.

Against: None.

CONSIDERATION OF RESOLUTION NO. 2003-75.

(Councilor Heldmeyer)

A Resolution Urging the New Mexico Blue Ribbon Tax Reform Commission to Hold Municipalities Harmless if the Commission Recommends the Elimination of Gross Receipts Tax on Food or on Medical Goods and Services.

Mayor Delgado stated that there was discussion at the recent meeting of the Municipal League on what would fill the gap when the GRT on food or medical goods and services is instituted. He asked Finance director Kathryn Raveling to comment on this.

Ms. Raveling stated that 73% of the City General Fund is from gross receipts tax revenues. She said she has taken every opportunity, as have members of the Governing Body, to encourage the Legislature to replace that with some very stable revenue that the City can rely on, which is very difficult to do. She commented that

this is a critical issue, and just doing away with the gross receipts tax on food would have a \$5.5 million impact on the City.

Councilor Heldmeyer said the Blue Ribbon Tax Reform Commission will meet tomorrow morning, and arrangements have been made to deliver this resolution to the Commission at that time.

Councilor Heldmeyer noted that Governor Richardson told the Municipal League not to worry; that if these taxes are eliminated, the cities will be held harmless, which means the State will find another revenue source to provide that money. She stated that the Blue Ribbon Tax Reform Commission addressed the Municipal League on the following day, and said they had not been able to find a mechanism that would accomplish that while providing similar and stable sources of revenue.

Councilor Heldmeyer moved for approval. Councilor Chavez seconded the motion.

Councilor Pfeffer stated that he recently read in a newspaper article that K-Mart's corporate structure is such that many of the goods sold in New Mexico in K-Marts are not subject to local gross receipts tax. He said this question was raised at the Municipal League but not answered to his satisfaction. He stated that municipalities in New Mexico deserve an answer to that, and wondered if the Blue Ribbon Tax Reform Commission could make a recommendation to the Legislature to correct that situation.

The resolution passed on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz.

Against: None.

CONSIDERATION OF RESOLUTION NO. 2003-76.

(Councilor Ortiz)

A Resolution Supporting the Elderly by Directing City Staff to Arrange Mediation by and Between Presbyterian Medical Services, Property Owners and the State of New Mexico.

Councilor Ortiz said he spoke with PMS representatives prior to this meeting and so would propose some changes to the resolution.

Councilor Ortiz moved for approval, with the following amendments:

Page 1, line 20:

~~Whereas, there is an acute shortage of available spaces for elderly in the region~~ the changing long-term care market and options to nursing home beds require further resources and development;

Page 1, line 25:

~~....owners and the State of New Mexico Agency on the Aging and Long Term Care Services Department to attempt to continue the provision of La Residencia on a temporary, emergency basis; to assure the appropriate placement and services to all La Residencia residents.~~

Councilor Lopez seconded the motion.

Councilor Chavez asked how mediation would be arranged, and what it would cost.

Senior Services director Rita Maes responded that her office has already begun communicating with La Residencia and the State office regarding the transition and discharge of La Residencia people.

Ms. Maes continued that she did not think formal mediation was necessary at this point. She stated that La Residencia staff “is working fast and furiously, but they’re also working in a very caring and compassionate matter to make these placements, and I’ve been very, very impressed.” Ms. Maes added that her office is making arrangements with La Residencia to move one resident into La Teresa today.

Ms. Maes gave several examples of arrangements that have been made to move residents to other facilities. She said some residents are leaving the state, one is going back home, and others are relocating to Taos, Albuquerque and other places.

Ms. Maes reiterated that formal mediation would be unnecessary: “The communication, the dialogue and the cooperation is there between my office, the State ombudsman office, State Long Term Care Department, and La Residencia staff.”

Councilor Chavez suggested that the reference to mediation be removed from the title of the resolution, which is the only place it appears.

Councilor Chavez pointed out that an appeals process has been instituted, so protections for the residents are in place.

Ms. Maes said there have been three appeals to date, and the decision will be rendered in November.

A PMS representative stated that there is an appeal process designed to safeguard the rights and concerns of any resident: "We will go through that process. We will make certain that every placement is appropriate. Probably the key factor...is that no decision can be made without the involvement of the family." He added that there were "all sorts of alternatives and options" if someone was not satisfied with a particular placement.

Councilor Chavez commented, then, that apparently the State "wouldn't throw anybody out in the street." The PMS representative responded, "I think we've got a very good working arrangement with them. If additional time is necessary, we will certainly negotiate that."

Councilor Ortiz stated that he was a member of the New Mexico Mediators Association, and firmly believed that mediation could result in a beneficial outcome. He commented that, if City or State staff believes in certain instances that formal mediation is necessary, he will commit \$500 out of his Association funds to pay for that. He said \$500 would cover the cost of two mediators.

The resolution, as amended, passed on the following Roll Call vote:

For: Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer.

Against: None.

Request for Consideration and Authorization to Enter Into an Agreement Between the Bureau of Reclamation, City of Santa Fe and County of Santa Fe to Lease San Juan-Chama Project Water.

City Manager Jim Romero submitted a letter from Peter Smith, a member of the public, for the record. *[Exhibit "A" to these minutes.]*

Assistant City Attorney Kyle Harwood referred to the latest draft of the agreement in the Council packet.

Mr. Harwood clarified for Councilor Heldmeyer that the \$47 per acre-foot being offered the City by the BOR is meant to reflect the complete price that the City paid this year for an acre-foot of 2003 delivery — O&M plus the base cost.

Councilor Heldmeyer asked Mr. Harwood if she was correct that it is the City that has paid the \$47 per acre-foot on all of the San Juan-Chama water under discussion.

Mr. Harwood said that was correct. He stated that the City has paid all the fees associated with the 5,605 acre-feet in the San Juan-Chama contract jointly owned by the City and County.

Councilor Heldmeyer pointed out that, when the BOR says they are leasing back or buying back this water, in reality they are paying back to the City what the City has already paid because the City is not going to get that water.

Mr. Harwood said that was correct — the \$47 per acre-feet offer is meant to reimburse the City the same amount it paid them in December 2002.

Councilor Bushee moved for approval of the agreement with the following amendment:

Page 2, under JOINT CONTRACTORS' DELIVERABLES:

1. For the 2003 calendar year, the Joint Contractors agree to lease to Reclamation the use of 1500 acre-feet of its San Juan-Chama Project water and the Joint Contractors agree to lease an additional 1000 acre-feet of its San Juan-Chama Project water at Reclamation's request under an option term. The option term may only be supplied from Rio Grande storage at \$100 per acre-foot. The option term shall require written notification to the Joint Contractors by December 1, 2003. The purpose of this lease term is to augment the total water supply to the Middle Rio Grande Valley under the terms set out below.

Councilor Ortiz seconded the motion.

Councilor Chavez asked Mr. Harwood if stored water can be sold at a higher price, and Mr. Harwood responded that stored water is traditionally purchased by BOR at \$100 per acre-foot and any given year's delivery is usually about \$47 per acre-foot. He said the difference in price is intended to address O&M charges — if the water has been stored for several years, the assumption is that the City, on average, has essentially paid the equivalent of \$100 per acre-foot for the stored water, absent the storage agreement that actually states that.

Councilor Chavez asked if he understood correctly that the BOR holds water in reserve during drought periods in order to be able to manage the river; and if so, is that over and above the City's allotment of 5,605 acre-feet.

Mr. Harwood responded that he could not adequately speak to that. He pointed out that the water being requested by BOR would be sold out of the City's storage and would be from 2003 delivery water only. He said Councilor Bushee's

amendment would tie the option term of the contract to the City's storage only. He stated that this would still be a sale of City water, but would come from a different pool of it in this case.

Councilor Pfeffer said he understood the County Commission has already adopted the agreement before the Council tonight, and Mr. Harwood clarified that the County Commission adopted the agreement, but with a two-word addition at the top of page 4:

Upon verification and approval by Reclamation's Contracting Officer, the billing will be forwarded to Reclamation's finance officer in Denver, Colorado, for payment to the City and County via electronic transfer....

Councilor Pfeffer commented that, unless the Council is willing to agree to that change, then some kind of process will be necessary to resolve the differences with the County. He asked Mr. Harwood what process that would be, and how long would it take.

Mr. Harwood responded that he would meet with County Manager Gerald Gonzalez and senior staff as soon as possible to discuss that.

Councilor Pfeffer asked if the final version would then have to go back to the City Council for approval.

City Attorney Bruce Thompson responded that any amendment to the contract would have to come back to the Council for approval unless the Council was to authorize staff — probably the City Manager — to negotiate the contract and sign off on it.

Councilor Pfeffer asked what percentage of reimbursement would go to the County, and what percentage would go to the City.

Mr. Harwood responded that City and County staff recognized, during recent discussion of this lease going through the governing bodies, "that if there was a lease and there was money involved, it would need to be a conversation. That is the same comment that Doug Sayre provided to the County Commission last night — that it was an unresolved issue, it doesn't appear to need to be resolved at this time, and that was the way we had proceeded."

Councilor Pfeffer asked what the language at the top of page three meant, specifically, since it seemed to say that the City and County would be taking the hit on what water may have evaporated or is lost in transport:

It is agreed by the parties hereto that the amount of water under lease by Reclamation will not be diminished by evaporation and transportation losses.

Mr. Harwood responded that the term reflects the fact that San Juan-Chama water does not experience evaporation or transportation losses in getting to Heron, partly because it goes through a tunnel. He said it then sits in Heron and experiences both, but the firm yield of the San Juan-Chama Project is from deliveries out of the bottom of Heron. He said the 2003 delivery is to come from Heron, and it would not have experienced either evaporation or transportation losses when BOR took it. He stated, "This provision applies more appropriately to stored water where we have paid an interest rate, so to speak, on storage in Abiquiu because of evaporation and transportation losses. If this term applied to the stored portion of the sale, it would say that you couldn't charge that evaporation or transportation loss back to the Bureau of Reclamation. They're buying one acre-foot out of Abiquiu, not the one point zero five acre-feet that it took to get it to Abiquiu and carry it over in Abiquiu."

Councilor Pfeffer how much would be lost here percentage-wise, and Mr. Harwood responded that the San Juan-Chama Project experiences a 2% loss between Heron and the Otowi Gauge near San Ildefonso. He added that there are formulas for figuring out the portion at all of the upstream reservoirs, but he did not know them right now. He said it is much less than 2%, however.

Councilor Pfeffer asked Mr. Harwood where the City stands with its San Juan-Chama water in terms of a permanent contract by 2016.

Mr. Harwood responded that staff has met extensively in the last few weeks with the Commissioner of BOR, the Interstate Stream Commission and senior State staff such as the Interstate Stream Commissioner, "and we're very confident that we're going to get a supportive position out of the Interstate Stream Commission. Estévan Lopez has been in Washington, D.C. since I last gave an update on this issue, and we have not gotten the letter we are expecting to get from his office."

Councilor Wurzbarger stated that Councilor Bushee's amendment was in conflict with what Councilors were told at the Public Utilities Committee, which was that there should not be a distinction made between the option water and the 1,500 acre-feet that the BOR was asking for.

Mr. Harwood explained that the original direction to staff was to go forth and negotiate the best terms available, with other qualifications; however, in the first five minutes of the meeting with BOR, the BOR indicated that they were only interested in buying 2003 delivery — so the conversation went from there in terms of what amounts were needed and so forth. He said the 1,000 acre-foot request was in light of potential changes in precipitation and the possibility that other contracts might not be successful.

Addressing the County Commission's addition of language that would have the check for the released water made out to the City and County, Councilor

Heldmeyer asked if the County has ever paid any of the O&M or other payment towards the San Juan-Chama water.

Mr. Harwood responded that the City has always carried the BOR fees associated with the San Juan-Chama contract and the County has never reimbursed the City for any of it.

Councilor Heldmeyer commented, "For them to ask for half of this money, which is only being reimbursement for the money that we have paid into them this year, strikes me as the height of chutzpah."

Mr. Harwood responded, "If we had foreseen that the payment portion of the lease was going to be a pertinent issue during the approval of whether to do it or not, we would have surely explored it more and brought you a recommendation on it. I think the County's desire was to add 'and County' so they're on the check, so to speak. They are the joint owners of the contract. Perhaps that issue could be resolved in parallel as we go through the rest of the month, if that part of the decision would like to come back to the Governing Body. It was not identified as a crucial element to resolve two weeks ago, and I wish we had."

Councilor Heldmeyer said she personally would direct staff to stipulate that the City will not sign a contract that contains "and County," and that if BOR is willing, perhaps staff can bring forward a contract that is strictly between BOR and the City.

Councilor Heldmeyer commented that, while the County is a joint signatory to the contract, "we have differing interpretations between the City and the County as to what that means."

Councilor Heldmeyer said she didn't know the legalities, but if the BOR were comfortable just signing this contract with the City, then she didn't think it would need to come back to the Governing Body for final approval, because the agreement reflects the intent of what the City is doing anyway.

Councilor Heldmeyer stated that, if the County "is holding out for money, that's between them and the BOR. All we're doing is getting reimbursed for money that we've paid. There's no profit for us on this."

Councilor Ortiz supported the language proposed by Councilor Bushee. He said, "I think our water should go at \$100 an acre foot, and I think we need to send a clear message to BOR that this is the price for, really, the conundrum they find themselves in because of the court decision, and we are willing participants in that."

Councilor Ortiz said he did not necessarily subscribe to the idea that the City "has to do this to maintain good relations" with the BOR. He pointed out that the BOR is a bureaucracy just like the City is, and "we need to stand pat behind getting the best deal we can for the water that we've got." He commented that, if the BOR

were put in the position of having to take the water from the City, the BOR would reimburse the City anyway.

Councilor Lopez said she was confused, because two weeks ago the Council directed staff to negotiate 3,600 acre-feet, “and now they come back and they only want 1,500 and maybe an option for 1,000,” which seems like good news because it is less than expected.

Continuing, Councilor Lopez pointed out that the Council earlier in today’s meeting “unanimously adopted a resolution directing the Mayor and staff to participate in multi-jurisdictional efforts to maintain river flow adequate to support a healthy river ecosystem.”

Councilor Lopez said it appeared the Council was rethinking everything tonight, which disappointed her. She pointed out that the City has to go ahead with this sale to the BOR.

Councilor Lopez asked Mr. Harwood if he supported Councilor Bushee’s amendment, or was tonight the first time he had heard about it.

Mr. Harwood responded that he had just heard about the proposed change on the option term tonight. He said he had no recommendation. He added that BOR senior staff has indicated that they are likely to activate the option as drafted. He stated that BOR staff called him last week and asked what the likelihood was of putting the number back up again, “and I said I don’t think the chances are very good on that, and he said, okay, we’ll just run with the lease that’s actually been passed by the Solicitor’s office in D.C. as well.”

Councilor Lopez expressed concern that the City not find itself back at the drawing board, adding that she hoped the County issues on the payment could be worked out through staff. She also suggested that staff be given direction to negotiate up from the \$47 rather than including it in the agreement tonight, since she didn’t want this to be a potential deal breaker.

Councilor Bushee clarified for Councilor Lopez that the motion she made, and which the Council passed at the last meeting, included conditions that the City seek the best possible terms for the City in negotiating with the BOR, and to make sure that the City not be placed in a pro rata position of being out there first, giving more water than any other contractor on the Rio Grande.

Councilor Bushee said her amendment tonight is part of that negotiation process. She pointed out that the BOR held back 900 acre-feet, or 15%, from the City. She said she wanted to see it stay at that figure; however, the 1,500 acre-feet is in line with all of the contributions from other contractors up and down the river. Addressing the 1,000 acre-feet option, Councilor Bushee commented that Santa Fe

is the only entity being asked to make up the difference in case another contractor doesn't come through or in case more water is needed in the short term.

Councilor Bushee expressed concern that the City not set any precedent for future negotiations, which she felt the City would be facing every year.

Councilor Bushee asked staff to make changes throughout the agreement so that it would be consistent with her amendment, including changing the reference from Heron Reservoir under Reclamation Deliverables (page 3) to Rio Grande storage, changing the \$47 figure to \$100 in the same sentence, and changing the payment amount from \$117,500 under Payment to the new calculation.

Councilor Bushee proposed language on the top of page 4 that would essentially say:

Upon verification and approval by Reclamation's Contracting Officer, the billing will be forwarded to Reclamation's finance officer in Denver, Colorado, for payment to the City via electronic transfer. Any billing would compensate contractors according to payments previously made.

Councilor Coss commented that, with either \$47 an acre-foot or \$100 an acre-foot, "we're just kind of taking money out of one pocket and putting it into another. If we take 2002 water, whatever that stored water is, and we get \$100 an acre-foot, then we're going to store 2003 water and we're going to start paying \$100 an acre foot. So I'm not sure we're gaining anything monetarily going to \$100 an acre-foot — we're just going to pay \$100 an acre foot to store water with a different birth date."

Speaking to Councilor Bushee's amendment in terms of market value, Councilor Coss suggested leasing the water to Las Campanas "and they can put it on their golf courses and they'll pay us a bunch. So I don't really go that direction in negotiations with the Bureau of Reclamation on this."

On the matter of the County "inserting themselves to get paid our money," Councilor Coss remarked, "You know, that's really, really very irritating."

Councilor Coss suggested that the Council adopt the agreement as presented by staff, without the County's insertion, and let staff work out whom the check should be made out to. He added, "Sometimes the County is irritating, but they're our cousins and we've got to live with them... I would give them the benefit of a doubt, saying they're not trying to steal our money with that — they're just trying to get up on the stage with us and say, 'us too.' "

Councilor Ortiz withdrew his second to Councilor Bushee's main motion.

Councilor Chavez seconded the motion, which defeated on the following Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Ortiz.

Against: Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzbarger; Councilor Coss.

Councilor Coss moved to approve the agreement as submitted by City staff. Councilor Wurzbarger seconded the motion.

Councilor Pfeffer asked if the motion includes that this is the last time the Governing Body hears this, and staff has the authority to negotiate further if necessary.

Councilor Coss said that was correct.

Councilor Heldmeyer proposed an amendment to incorporate Councilor Bushee's earlier suggestion:

Any billing would compensate contractors according to payments previously made.

Councilor Coss said he would accept the amendment as friendly "provided we don't have to vote again on this contract in two weeks."

Councilor Heldmeyer asked Councilor Coss, "So you're willing to let staff negotiate whether the County gets any money out of this or not?"

Councilor Coss replied, "I think what we're giving staff is direction that the County didn't pay anything, so the County's not getting anything reimbursed."

Councilor Coss expressed concern that Councilor Heldmeyer's amendment would bring the Bureau of Reclamation "into our little family feud with the County over whose water is it and who's paid what. And I don't know if it's helpful to try to have them sort that out for us."

Councilor Heldmeyer stated that, if Councilor Coss didn't want that language in the contract, then she wanted it as direction to staff.

Councilor Coss said, "Yes, I would fully make that as a direction to staff. As part of the motion that we're passing with the language that says the check goes to the City, we're authorizing the staff to resolve what we now know is the difference between the version the County passed and we're passing, with the direction that: Don't give our money away, staff."

The motion passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee.

Against: None.

Request for Approval of Amendment #1 to the Original Cooperative Agreement with the Bureau of Reclamation for a Grant in an Additional Amount of \$450,000 to be Used for Development of the Buckman Well Nos. 10-13 Project.

Councilor Ortiz moved for approval. Councilor Lopez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez.

Against: None.

Mayor Delgado noted that it was almost 7:00 p.m. and Council had not finished with the Afternoon Session. He asked that Petitions From the Floor be heard now.

PETITIONS FROM THE FLOOR

Ben Baca

Mr. Baca, president of *Sociedad Colonial Española de Santa Fe*, read a letter that had been sent to all members of the Governing Body:

On Friday, September 5, and Sunday, September 7, our group of Spanish Colonial dancers had the opportunity to perform for the 291st Santa Fe Fiesta, as we have for many years. While we were there, the topic of discussion was about a proposed gazebo. It sparked our interest, since we presently have 53 members in the organization and have been participating in community activities for many years.

I understand that the proposed stage has a usable floor area of 27 feet by 21 feet. For a large group like ours, I am always vigilant about the safety of our senior members and the area we will perform in. The proposed size would never accommodate a group

the size of ours. Other concerns were expressed, such as the height and acoustics of the proposed gazebo that might hinder the viewing audience. If the community and its representatives are so inclined to have a gazebo, we ask that you reconsider its location but not in the existing performance stage site, for the community has enjoyed many performances, large and small, for hundreds of years.

In your wisdom, please consider purchasing a state of the art performance stage that is removable, expandable or reconfigurable.

Carlos Martinez

Mr. Martinez, residing on Cerro Gordo Road, stated that he echoed the previous speaker's concerns: "We have to have enough room to be able to perform, and we're not the only ones that perform there. There are children that perform there. And safety is of the utmost concern. We would really appreciate it if you would consider the proposal asked by our group."

Miguel Castillo

Mr. Castillo, 106 Malaga Road, pointed out that the Fiesta Council this year decided to move the stage back about 18 feet toward the monument, which was "a wonderful move because, by doing that, I purchased and rented 200 chairs that were placed under the present canopy of those two large trees. Many Fiesta Council members told me it was the first Fiestas in their entire lives that people sat in those chairs all day long and watched the many different performances that happened.... I hate to beat a dead horse, but I want you to remember that, if we have a permanently fixed gazebo under that canopy, the Fiestas from now on — nobody will be sitting in the shade. The people will be back out on the street."

Mr. Castillo stated, "I went to a City works meeting — I was invited by the director of City works to talk about some of the concerns that I had, and I was assured at that meeting that they had gotten somebody that had a lot of experience in the theatrical industry. I had a chance to meet with this person Sunday, and he said, 'yes, I was on the committee, but I quit the committee because the rest of the committee had a preconceived idea of what this thing was going to be, and they would not listen to any of my recommendations.... on the dimension of it or, most importantly, the height of the stage.' "

Mr. Castillo also expressed concern about a newspaper article today discussing the City's plans to remove the grass on the Plaza. He pointed to the plaza in Las Vegas, which is grassy and welcoming to people. He said the Santa Fe Plaza could end up looking like the plaza in Taos, which is mostly concrete to avoid maintenance.

[Conclusion of Petitions From the Floor.]

Mayor Delgado stated that the Governing Body would have dinner during the executive session and then reconvene for the Evening Session.

MATTERS FROM THE CITY ATTORNEY

Request to Go Into Executive Session Pursuant to Section 10-15-H (2) NMSA to Discuss Limited Personnel Matters Regarding the Professional Services Agreement of Yolanda Y. Vigil, City Clerk.

a) Action May Be Taken Following the Executive Session on the Professional Services Agreement.

Councilor Ortiz moved to go into executive session to discuss this item. Councilor Wurzburger seconded the motion, which passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Chavez; Councilor Coss.

Against: None.

Not present during this action: Councilor Bushee.

[The Governing Body was in executive session from approximately 7:20 p.m. until approximately 7:40 p.m.]

Councilor Heldmeyer moved to come out of Executive Session. Councilor Chavez seconded the motion, which passed 8-0 by voice vote.

Councilor Ortiz moved to approve the professional services agreement with Yolanda Y. Vigil. Councilor Wurzburger seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez.

Against: None.

[No recess was called, and the Governing Body began the Evening Session at approximately 7:45 p.m.]

EVENING SESSION

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

None.

PETITIONS FROM THE FLOOR

[See page 29.]

APPOINTMENTS

None.

PUBLIC HEARINGS

Case #A 2003-05 – APPEAL. 1467 Canyon Road Terrain Management Variance Appeal. Albert C. Durand, Agent for Constance S. Durand, Appeals the Decision of the Planning Commission to Deny a Variance to Terrain Management Regulations That Was Requested for the Purpose of Encroachment into Areas With 30% or Greater Slopes on Two Tracts. The Property is Located at 1467 Canyon Road, Immediately North of the Santa Fe River. (Postponed at August 13, 2003, City Council Meeting.)

City Planner Greg Smith reported as follows: "This matter was before the Planning Commission with a request for a variance. The variance specified a couple of areas on the site plan, where the applicant had asked to be allowed to encroach into 30% slopes. The applicant's proposal included a tentative agreement with the Audubon Society and the Conservation Trust to expand an existing wildlife conservation easement located on the property. The Commission apparently did not believe that the findings were substantiated for a variance

approval and denied that. It was appealed to the Council. There have been several continuances as the property owner and the Conservation Trust have tried to finalize agreements about the Trust expansion proposal.

“Staff is recommending approval subject to a number of conditions. Those conditions are similar to the ones that staff suggested that the Planning Commission adopt. The staff report in tonight’s packet with the September 10 meeting date proposes some amendments to Condition 1.8 of the earlier recommendation clarifying that the wildlife preserve expansion should be dedicated to the Santa Fe Conservation Trust, and language about the conveyance and acceptance of the Trust submitted to staff for approval.

“I understand that the applicant has requested that sixty days be allowed rather than thirty days; staff does not have an objection to that if the Council determines that that’s appropriate.”

NOTE: staff made the following recommendation in the aforementioned memorandum:

RECOMMENDATION:

If the applicant/appellant documents that agreement has been reached with the Conservation Trust regarding the terms amending the conservation easement, the conditions noted in the previous staff report are appropriate with one minor change:

1.8 The applicant shall convey to the Santa Fe Conservation Trust the boundary of the wildlife preserve as indicated on the site plan, as shown on Exhibit D of the agreement entitled “Letter of Intent” dated 10/9/02 between the applicant and Audubon New Mexico within thirty (30) days of variance approval, and a copy of the conveyance and the acceptance by the Trust shall be submitted to the City of Santa Fe’s Development Review Section.

Appellant representative Albert Durand, 1463 Canyon Road, was sworn.

Large maps were on display to augment Mr. Durand’s presentation.

Mr. Durand stated that the land involved is a 5.5 acre tract running along nearly 1,500 feet of the Santa Fe River below upper Canyon Road, with the west end of adjacent to Adam Armijo City Park. He said most of the land is a flat meadow above the river, sloping up to the base of a 25-foot slope along the north side to the meadows above. He said the 100-year floodplain extends to within 30 to 70 feet of the toe of the slope.

Mr. Durand said the flood plain boundary and a waterline easement running parallel to the slope leaves a long band of buildable area between these boundaries and the slope.

Mr. Durand stated that they purchased this property because it is just below their house and in order to prevent the possibility that eight large homes could be legally built on this property, which is zoned R-2. He stated that half the land has now been placed into a perpetual wildlife conservation easement with Santa Fe Conservation Trust.

Mr. Durand stated that, after they granted the initial 50% conservation easements, they entered into an agreement with Audubon New Mexico, which was intended to further limit development and to increase riparian and open space protection on the property. He said the first step was to process an approved plat for just two tracts, with a permanent plat development restriction limiting the use of each tract to only one house and its accessory dwellings — a 75% development reduction from eight primary homes to two.

In describing commitments made to Audubon, Mr. Durand said they agreed to abandon the two west building sites and the road and parking areas serving them, and to convey them into the conservation easement, at the same time adjusting the conservation easement boundary to create a maintenance buffer around each building in the proposed variance area. Additionally, they agreed to create a wildlife preserve long 475 feet of the river, next to the City park.

Mr. Durand noted that the concept of building into the toe of the slope in these locations, as well as the wildlife preserve, received approval from the Trust two years ago. He said there have been changes to the plan and proposal for the conservation deed since then, so the Trust will have to review it again before approving and accepting it. He asked that City conditions 1.8 and 1.9 be amended to 60 days for fulfillment instead of 30 in order to allow additional time for the Trust to complete this process. That aside, he said he believed that the variance warranted approval on its own merits.

Mr. Durand continued, “Our agreement to convey the wildlife preserve and the two building sites into the conservation easement is conditional on city approval of this variance proposal, which the Neighborhood Association, River Commission, City Planning Department and the City’s terrain management consultant David Morgan all concluded met the intent and purposes of the Terrain Management Ordinance.

“However, we believe the variance application itself solidly warrants approval on its own merits. We recognize that the Council is obligated to determine whether or not this specific variance proposal satisfies the purposes and the intent of the Terrain Management Ordinance, Independent of our commitment to convey additional conservation easements and a wildlife preserve.

“When we went to the Planning Commission for this variance, we were denied, with no discussion of the variance application itself, apparently on the grounds that the wildlife preserve conveyance was an inappropriate condition because it would somehow create a precedent along the river.

“They didn’t discuss whether it would be a good precedent or a bad precedent; and although there are very few properties that have road access to the toe of the slope along the river, the Planning Commission was apparently concerned that everyone else would start proposing new wildlife preserves and conservation easements to get a variance. We’d have this horrible proliferation of wildlife preserves and conservation easements along the river.... What a disaster.

“The Planning Commission minutes reflect, however, that Assistant City Attorney Anne Lovely took the position at the hearing that the wildlife preserve and conservation easements were appropriate conditions for this specific and unique site and therefore didn’t set a precedent that would obligate the city to follow in the future with other sites.”

Mr. Durand also pointed out that, while 30% is a good rule of thumb in terrain management regulations, it is not always applicable. He stated, “In some locations like highly visible hillsides above the city, building on a 20% slope can have far worse visual and environmental impacts than a much less publicly visible building built on a flat meadow and tucked into the base of a slope like ours. In some locations...slopes are unstable and some under-30% slopes shouldn’t even be built on; but other slopes like ours back up to solid bedrock and are very stable. The chance of causing damaging drainage problems for neighbors below doesn’t apply when there will never be any neighbors below, like with our site.”

Mr. Durand noted that the ordinance lists 12 considerations that “shall be used during the design and planning process for all proposed developments subject to these regulations. After three years of work with community planning and environmental organizations, we’re all convinced that this proposal satisfies all these design and planning considerations in ways that are better than if the variance isn’t granted.

“It is very unusual for a minor variance application like this to be formally supported by the Canyon Neighborhood Association, the Santa Fe River Commission, the City Planning Department, the Upaya Zen Center, Audubon New Mexico, and the City’s own open space and terrain management consultant, David Morgan of La Calandria Associates.”

[Mr. Durand’s appeal is submitted herewith as Exhibit “B” to these minutes.]

Mr. Durand submitted a letter of support from Melissa Savage, 1477-1/2 Canyon Road. Ms. Savage stated in her letter that her house and land are immediately to the west of the Durand property. *[Submitted herewith as Exhibit "B.1."]*

Mr. Durand read a letter of support from David Morgan, president of La Calandria Associates. [See page 15 in City Council packet for this letter.]

The floor was opened to public comment in favor of the appeal.

Kip Corneli came forward and was sworn. He stated that he was a long-time friend of the Durands "and can only support in the strongest terms the benefits I feel this project will have not only for Upper Canyon Road and the upper river area, but for the whole community. Mr. Durand's work is very detailed and very thorough, and he tries to leave no stone unturned. I believe that the project as outlined will not do any damage at all to the scene up there, but instead will help it immeasurably."

Richard Ellenberg, 1714 Canyon Road, director and treasurer of the Canyon Neighborhood Association, came forward and was sworn. He stated, "In this case, we are convinced that the request for the variance does not adversely impact the terrain, and denying the variance would not serve the purposes of the terrain ordinance... We think that, because of the location of the cuts at the toe of the slope in the river valley, and their small size, they will have no adverse impacts on drainage or upon aesthetic considerations, and therefore no adverse precedent would be created by allowing this variance to be passed. Therefore, we think it's appropriate to grant it.

"There are conditions offered by the applicant, two in particular. One is that there will be no more than two parcels, each with no more than one residence and related accessory buildings; the other is that the conservation preserve will be delivered and accepted within sixty days. We think the conservation preserve is a substantial plus to the neighborhood, the City and the river, and we certainly hope the parties can resolve any differences they may have and that that will come about. We think those conditions offered by the applicant can be explicitly accepted by the Council, and we urge you to do so."

Kent Williamson, Santa Fe River Project director for Audubon New Mexico, was sworn. He distributed photographs of maps reflecting the wildlife preserve and the Durand property.

Mr. Williamson stated that 475 feet of the preserve is within the Durands' property, and the rest of the preserve is a 2,000-foot-long reach of the Santa Fe River, "which contains one of the finest examples of surviving native riparian wildlife habitat anywhere in the city of Santa Fe. The woodlands...and the meadows host an extraordinary diversity of wildlife. We've identified more than 90 species of birds just in this particular location...."

There were no persons wishing to speak against this appeal from the floor.

This concluded public comment.

Councilor Bushee asked Jim Crain of the Santa Fe Conservation Trust “if things are all in order in terms of being able to dedicate that in the time frame that’s being requested.”

Mr. Crain, being duly sworn, responded that they have had several discussions with Mr. Duran and Mr. Williamson over the last year, “and I think that the six concerns that we have expressed in the past are being met here tonight.”

Mr. Crain also clarified that public access to the preserve is not part of the agreement.

Councilor Bushee asked Mr. Durand to provide assurances that all terrain management regulations would be strictly adhered to in his development.

Mr. Durand responded that one of the conditions of City approval is that all terrain management regulations will be strictly adhered to with the exception of the one that would be relaxed by this variance application.

Councilor Bushee expressed concern that she “not get any more calls that the river has been altered in any way through your construction.” She said she was speaking in particular about a river crossing that “perhaps you had constructed” and that a doctor living in the area called to the City’s attention. She said she understood permits were subsequently issued.

Mr. Durand explained that the doctor in question “contacted about 14 organizations in the community. We dealt with, and worked with, 14 of them. That included everyone from the neighborhood association, Santa Fe Watershed Association, Santa Fe Conservation Trust, the Canyon Neighborhood Association, the Army Corps of Engineers and the State Water Quality Division as well as the City Planning Department... and all the other players in this to devise a solution to the river crossing, which is a historical crossing.... that would uniquely pass water both through and over the crossing. It really was a hard crossing, particularly for fire protection purposes. I would love to have you come out and visit it. I personally handled about 17,000 tons of river boulders.”

Councilor Bushee commented that she found it remarkable and impressive that Mr. Durand has garnered the support of so many entities in this appeal: “I think everybody’s intention here is to do the best by nature by that piece of land. And what disturbances you create I assume will be in keeping with all those terrain management ordinances.”

Mr. Durand responded, "I promise you."

Councilor Bushee moved to uphold the appeal and overturn the Planning Commission's decision. Councilor Wurzburger seconded the motion.

Councilor Wurzburger stated that she supported upholding the appeal because, in reviewing the Planning Commission minutes, "I could find no basis for denying this appeal."

Responding to questioning from Councilor Heldmeyer, Mr. Smith distributed a copy of the actual lot line adjustment plat reflecting the approved lot lines. He agreed that the reduced and photocopied version in the packet was not clear.

Councilor Heldmeyer asked Mr. Durand if there was any intent to subdivide Lot A and Lot B further, and Mr. Durand responded that they could not do so because of the plat restriction, deed restriction and covenants.

Mr. Durand indicated that he would have no problem with having a condition imposed to that effect. He added, however, that somebody in the future might request a lot line adjustment.

Councilor Heldmeyer noted that the conservation conveyances state that "Tract A and Tract B, regardless of subsequent size...." which suggests that they could be divided and the other halves designated as Tracts C and D.

An additional condition of approval, that Tract A and Tract B cannot be subdivided further, was accepted as a friendly amendment.

Councilor Heldmeyer said the Planning Commission minutes reflect discussion about access concerns, but it was not very clear. She asked Mr. Smith for clarification.

Mr. Smith responded that there was a condition recommended by staff about improving access roads to meet City standards, including fire code requirements. He said investigation and consultation with the Fire Department showed that the Fire Department had approved the existing access road as adequate provided there was a condition requiring sprinklering of new buildings to be constructed on that site.

Mr. Smith requested that, in addition to staff's recommendation for changes to Condition 1.8, Condition 1.9 also reflect a change from 30 days to 60 days.

Councilor Bushee restated her motion to include all of staff's conditions, including the amendments to 1.8 and 1.9, as follows:

- 1.1 Development on the property will be subject to the provisions of Ordinance No. 2002-29, Annual Water Budget Ordinance, and Resolution No. 2002-55, Annual Water Budget Regulations and Procedures, at the time of permit application or water hookup request.
- 1.2 Variances to slope disturbances shall be granted if the Commission determines that the submittal complies with the intent of the terrain management regulations and if the material, method, or work offered meets equivalent standards prescribed in the regulations for aesthetic and mechanical quality, effectiveness, durability and safety (14-8.2 F SFCC).
- 1.3 Grading plan for the common driveway shall be submitted and approved as meeting the requirements of the grading and erosion control performance standards as part of building permit review and approval.
- 1.4 Compliance with all applicable provisions of terrain management regulations shall be required, except those specifically waived by this variance.
- 1.5 The variances shall be limited to the areas shown on the applicant's exhibit labeled "Connie Durand Tract Slope Analysis Amend re: Variance App." and dated 1/12/03, and shall not exceed seven (7) feet in height and shall not encroach more than 13.5 feet horizontal from the toe of slope.
- 1.6 The total intrusion into the slope shall not exceed 2,000 square feet.
- 1.7 The variance shall expire five (5) years after it is granted.
- 1.8 The applicant shall convey to the Santa Fe Conservation Trust the boundary of the wildlife preserve as indicated on the site plan, as shown on Exhibit D of the agreement entitled "Letter of Intent" dated 10/9/02 between the applicant and Audubon New Mexico within ~~thirty~~ sixty (60) days of variance approval, and a copy of the conveyance and the acceptance by the Trust shall be submitted to the City of Santa Fe's Development Review Section.
- 1.9 The applicant shall convey the conservation easement adjusted perpetual Wildlife Conservation Easement Map as shown on the Preliminary Conservation Easement Map as described in the Agreement between the applicant and Audubon New Mexico entitled "Letter of Intent" dated 10/9/02. The map shall be prepared by a registered New Mexico Land Surveyor and shall be conveyed as set forth in the above agreement within ~~thirty (30)~~ sixty (60) days of variance approval, and a copy of the conveyance shall be submitted to the City of Santa Fe's Development Review Section.

- 1.10 The finish floor elevation of all inhabited structures on Tract A and Tract B shall not be less than one foot above the base flood elevation as presented on FIRM Panel No. 350070 0006C [as required by Section 14-8.3(C)(5)] and a Certificate of Elevation attesting to compliance shall be provided prior to approval of any foundation and/or framing inspection.
- 1.11 Tract A and Tract B cannot be subdivided further.

Mr. Smith also noted, "The Council may adopt language with this variance that precludes further subdivision unless and until the Council at a future time amends this condition of approval, but it is not technically a perpetual restriction against further subdivision."

Noting Condition 1.7, stating that the variance shall expire five years after it is granted, Councilor Heldmeyer asked if this meant, "If it has not been acted upon."

Mr. Smith responded that the construction that occurs within five years "will be considered constructed in conformance with the variance, but no construction after that day if that occurs."

Councilor Heldmeyer proposed that Condition 1.7 be clarified to so reflect.

That amendment was accepted as friendly.

Councilor Heldmeyer asked what would happen after 60 days if the wildlife preserve and conservation easement were not conveyed.

Mr. Smith responded that the variance would be null and void, and the applicant could proceed under whatever restrictions apply in the City Code without the variance.

City Attorney Bruce Thompson agreed with that assessment.

Councilor Heldmeyer proposed the following condition of approval:

- 1.12 No permit for construction or grading shall be issued until Conditions 1.8 and 1.9 have been met.

The amendment was accepted as friendly.

Addressing Mr. Durand, Councilor Heldmeyer noted that, according to the law, the Council could only grant a variance to terrain management if extreme hardship would result without the variance. She observed that, while the Planning Commission made that finding, there was no discussion in the minutes of that from

Mr. Durand. She asked him what extreme hardship would result without this variance.

Mr. Durand responded, "I think there's hardship both on our part but on the part of the community. If the variance isn't granted, these buildings are going to be forced out further into the meadow, they're going to be more intrusive on the open space, it's going to be a hardship for visitors to the community, it's going to be a hardship for anybody who drives on Canyon Road to experience something that isn't as sensitive to that riparian area and to the open space and to the quality of that site. It's a hardship to me, as a designer, to look out and to have to design a building that I know is nowhere near as nice as it could be if we were enabled to make it a little bit deeper and not so wide. It would be very painful, in fact, to be forced to do something because of a technicality that would not be anywhere near the quality that we could accomplish if we're granted the variance."

Councilor Heldmeyer noted discussion in the Planning Commission minutes of possible problems with the uphill neighbor, and Mr. Durand stated that those problems had been resolved. She asked Mr. Smith to respond.

Mr. Smith responded that he was not sure what discussions have occurred between Mr. Barela, who spoke at the Commission, and Mr. Durand. He said staff's analysis of the objections raised by Mr. Barela was that there were no issues regarding compliance with the City Codes. He said discussion at the Commission involved runoff smoke from chimneys and things of that nature, which would be covered by staff in enforcing Code requirements of the various terrain management and drainage regulations.

Councilor Heldmeyer asked if the building code contains any provisions that would prevent chimneys being in certain places or certain heights if they would interfere with the neighbors. She commented that she often receives calls from people complaining that smoke from other chimneys gets into their house.

Mr. Smith responded that the building code does not contain any provision that would control smoke crossing property lines, and he wasn't sure there was a practical way to do that.

In further discussion, Mr. Smith stated that City staff does not have the authority to make recommendations on chimney placement.

Councilor Heldmeyer asked Councilor Bushee if she would accept a condition of approval that would give staff such authority in this particular case, and Councilor Bushee responded that she would not.

Councilor Chavez stated for the record that Mr. Durand called him but he was not able to meet with him on the site. He stated that he received a call from Kent Williamson as well, and met with him, but not at the site. He said he understood

that barring public access to the wildlife preserve was to benefit the wildlife and protect the riparian area, so chose not to visit the site recognizing that "if I did visit, I'd want to go back and knew that I wouldn't be able to."

Councilor Chavez how much of the property will be dedicated to the preserve, and Mr. Durand responded that he could not recall the exact size of the piece, but thought it would be 1.25 to 1.5 acres.

Councilor Chavez stated that, as he understood it, while the variance would not be locked into perpetuity, the wildlife preserve would.

Mr. Durand responded that this was correct. He said that, if the variance areas are not built in within five years, that would not affect the perpetuity of the additional conservation easements or wildlife preserve. He said the preserve is granted to Santa Fe Conservation Trust and as part of an overlay agreement with Audubon.

Mr. Smith clarified that, with respect to Condition 1.7, the City Attorney has advised staff this evening that the variance is allowed by code to exist for two years with one 18-month extension after that, or a maximum of three and one-half years. At the time the report was prepared, he said, staff was working with new language on variances and erroneously believed that the Planning Commission had the authority to extend that to five years.

Councilor Pfeffer moved to amend Condition 1.7 to reflect the City Attorney's opinion.

The amendment was accepted as friendly.

Councilor Pfeffer asked Councilor Bushee if it was her intent to add the Planning Commission findings to her motion, and Councilor Bushee responded that it was.

Councilor Pfeffer proposed to add the following findings, amending the second finding as noted:

1. A variance to the terrain management regulations prohibiting the disturbance of slope exceeding 30% as required by Section 14-8.2 is hereby approved as shown on Exhibit A.
2. ~~The Planning Commission~~ City Council finds that extraordinary hardship would result from strict compliance with these regulations, and that the requested variation will not have the effect of nullifying the intent and purpose of these regulations.
3. The maximum intrusion into the slope will not exceed 2,000 square feet.

The amendment was accepted as friendly.

The motion to uphold the appeal, as amended, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: None.

Councilor Heldmeyer stated, prior to voting, "I think I know why the Planning Commission found what they found, because I found tonight that Mr. Durand's individual claim of extreme hardship was unconvincing, to put it mildly. However, the law does not say that the hardship has to occur to the applicant, and he pointed out hardship that could occur to the area, given that the neighborhood agrees with this. I hope we know what we're doing."

CONSIDERATION OF BILL NO. 2003-32: ADOPTION OF ORDINANCE NO. 2003-33. (Councilor Lopez)

An Ordinance Repealing Ordinances 1986-66, 1986-67 and 1986-68 and Granting a New Non-exclusive Franchise to Comcast Cablevision of New Mexico, Inc. (aka Comcast Communications of New Mexico, Inc. and Comcast Cable Communications of New Mexico, Inc.) ("Comcast") to Construct, Operate and Maintain a Cable System in the Public Rights-of-way and to Provide Cable Service Within a Franchise Area With the City of Santa Fe; Establishing Terms and Conditions of the Franchise Renewal (Appendix "H" Cable Television Franchises).

City ITT director Rick Carlisle stated, "This ordinance is repealing the old ordinance that supported the old franchise, and creating a new ordinance which supports the franchise that was approved on February 12 and went into effect on April 1. There are no changes in the franchise agreement."

There was no one wishing to speak from the floor either for or against this request.

Councilor Lopez moved for approval. Councilor Bushee seconded the motion.

Councilor Heldmeyer proposed the following amendment:

Page 8, line 7, insert the following subsection:

7.6.1 Public Safety Hazards. In the event of potential hazards to the general public involving Comcast equipment or services, e.g., downed cables, open trench, etc., the City's Director of Information Technology shall have the final authorization in declaring a public safety hazard. Declaration of a public safety hazard would require immediate attention by appropriate Comcast personnel.

The amendment was accepted as friendly.

The ordinance, as amended, passed on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

[The Afternoon Session was continued.]

MATTERS FROM THE CITY ATTORNEY

No other matters.

MATTERS FROM THE CITY CLERK

City Clerk Yolanda Vigil announced that she would be releasing candidate packets on October 2, which will contain the nominating petitions for Municipal Judge and the four Council positions, one from each district.

MATTERS FROM THE CITY MANAGER

None.

COMMUNICATIONS FROM THE GOVERNING BODY

Councilor Coss

Councilor Coss distributed a resolution to establish a fund to loan residential water customers money to repair water leaks. He requested that the resolution go to the PUC and Finance Committee.

Councilor Coss stated that the Water Conservation Committee would be proposing a rebate for hot water recirculators and low flow washing machines.

Councilor Pfeffer

Councilor Pfeffer distributed a resolution calling for the improvement of the condition of the Santa Fe Plaza and directing staff to (insert word:) expeditiously bring to the Governing Body designs for improvements, including replacing the stage. He said the purpose is to ask the Governing Body to accept its responsibility for determining exactly what will happen on the Plaza in terms of landscaping, structural improvements and the proposed gazebo, and allowing formal public hearings on the subject. He asked that the resolution go to the Public Works Committee and then to the next City Council meeting.

Councilor Pfeffer thanked the City Manager for the two large TV monitor screens, and asked if displays on easels, etc. will also be projected for the benefit of the audience and the viewing public.

Mr. Romero responded that one of the cameras would be moved further back so that can be accomplished.

Councilor Pfeffer urged people to fly their flags tomorrow, the second anniversary of 9-11.

Councilor Chavez

Councilor Chavez distributed a resolution repealing a City-County joint resolution establishing a City Capital Improvements Advisory Committee and reestablishing the Committee in order to review the City's impact fee schedule and do other necessary work to allow an annual review of the fees.

Mayor Delgado agreed to meet with Councilor Chavez to discuss appointments and possible reappointments to the Committee.

Councilor Chavez announced that the Wings for Hope Motorcycle Riders Association would be hosting a benefit dance and art auction at the Eagles on Early Street on Saturday, September 27, from 5:00 p.m. to 11:00 p.m., for adults only. He said a poker run would be held earlier at 2:30. He stated that the proceeds would go to needy families in the Santa Fe area.

Councilor Wurzbarger

Councilor Wurzbarger introduced two resolutions, the first of which should go to the PUC at the next meeting: 1) to direct staff to cooperate with County staff in the joint assessment of the technical and economic viability of the regional desalination water project; and 2) to deal with the issue of not having any written policy, or any consistent verbal policy, for the introduction of processing either resolutions or ordinances.

Mayor Delgado

Mayor Delgado distributed a resolution supporting the replacement of the monument at John F. Griego Park in Barrio La Cañada.

Councilor Bushee

Councilor Bushee announced that an Ethics & Rules Committee meeting is scheduled for September 18 at 4:00 p.m. She stated that the Committee has a vacancy and she would welcome candidates.

Councilor Bushee distributed proposed active water harvesting provisions, which have been changed to Chapter 14. She asked that this go to the Public Utilities Committee at its next meeting and Public Works Committee.

Councilor Bushee asked that staff or the appropriate City committee look into revising the required plant materials listed in the Escarpment Ordinance such that they are native species and not necessarily evergreens; or if evergreens are retained, that they not be required for planting until the bark beetle situation is under control.

Councilor Bushee said she is receiving calls from people concerned about the West Nile virus. She asked staff to work with Santa Fe County in educating people on what to be concerned about and what not to be concerned about.

Councilor Bushee stated that she is waiting to hear back from David Pike on the zoning issue in Casa Solana, and a letter from Mark Brooks regarding an easement and drainage issue off West Alameda.

Councilor Bushee recognized the hard work of the Fiesta Council and others on a safe Zozobra and a safe Fiesta this year.

Councilor Ortiz

Councilor Ortiz distributed a memo from Jeanne Price and Kyle Harwood on the proposed changes to the water budget ordinance, as well as to the water budget administrative regulations. He asked that this go to the Public Works Committee, Public Utilities Committee and the Planning Commission.

Councilor Ortiz distributed a resolution celebrating the sport of handball, and declaring October 3-4 "Santa Fe Prairie Dog Handball Classic Weekend."

Councilor Lopez

Councilor Lopez distributed a resolution, prepared by Kathryn Raveling, establishing a water rates steering committee.

Councilor Lopez distributed a resolution creating a bicycle and trail advisory committee.

Councilor Lopez distributed a resolution supporting the naming of the skateboard park at Franklin Miles Park in honor of Martha Ramirez. She stated that AFSCME will be participating in the celebration at the dedication.

Councilor Lopez commended Maria Clokey on her hard work on the new Burro Alley card.

Councilor Heldmeyer

Councilor Heldmeyer noted that, on September 13, there will be two events on Old Santa Fe Trail: at 10:00 a.m., the Korean War veterans plaque will be restored, with the help of the VFW, to Amelia White Park; and at 2:00 p.m. there will be a dedication of the Santa Fe Trail monument.

Councilor Heldmeyer said the contractors working on economic development for the City have been holding meetings, which have been attended by many Councilors, and what they are hearing suggests that these consultants may need some direction, but there is no formal mechanism to do that. She suggested that, at the next Finance Committee meeting, there be a discussion of what the economic development consultants are doing and what direction the Council wants to take.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 9:15 p.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter